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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,945	06/24/2003	John F. Grubb	RL-1627DIV	1816

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ALLEGHENY TECHNOLOGIES INCORPORATED
1000 Six PPG Place
Pittsburgh, PA 15222-5479

EXAMINER

DOVE, TRACY MAE

ART UNIT	PAPER NUMBER
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1795

MAIL DATE	DELIVERY MODE
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06/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/602,945

Applicant(s)

GRUBB, JOHN F.

Examiner

TRACY DOVE

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-40, 42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-40, 42 and 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to the communication filed on 2/29/08. Applicant's arguments have been considered, but are not persuasive. Claims 36-40, 42 and 43 are pending. This Action is FINAL.

Claims Analysis

The claims recite the terms "up to", "less than" and "no more than", which all encompass the value zero.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-40, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpkins et al., US 6,613,468 in view of Taruya et al., JP 2000-294256, as evidenced by Woods, US 5,424,144.

Simpkins teaches a solid oxide fuel cell comprising an electrolyte 40 disposed between an anode 30 and a cathode 50 to form an electrochemical cell 10. The solid oxide fuel cell further includes an interconnect 24 (Figure 1; 2:61-66). The solid electrolyte may comprise zirconium oxide (zirconia) (3:20-42). The interconnect is electrically conductive and may comprise a ferritic stainless steel material (6:46-67).

Simpkins does not explicitly teach the ferritic stainless steel composition of the claimed invention, but does disclose the interconnect may be a ferritic stainless steel material.

However, Taruya teaches a fuel cell comprising a separator (interconnect) having a specific ferrite stainless steel composition. Respective component elements of the ferrite stainless steel composition are 10.5-35 wt% of chromium, 0-6 wt% of molybdenum, not more than 0.018 wt% of carbon, not more than 0.2 wt% of titanium and not more than 0.3 wt% of niobium (abstract). The ferrite stainless steel separator may be contained in a fuel cell (0020). Taruya teaches the molybdenum range is preferably 0.5-5 wt% of the ferrite stainless steel composition (0041). Taruya is silent regarding the claimed properties of the ferrite stainless steel. However, since the compositional limitations are disclosed in Taruya, then the recited properties would have been inherent in the teachings of Taruya absent any proof to the contrary.

Therefore, the invention as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made because one of skill would have been motivated to use the ferrite stainless steel composition of Taruya for the interconnect of Simpkins in view of the teaching by Simpkins that a ferritic stainless steel material may be used for the interconnect. Furthermore, the courts have ruled a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (Claims to titanium (Ti) alloy with 0.8% nickel (Ni) and 0.3% molybdenum (Mo) were not anticipated by, although they were held obvious over, a graph in a Russian article on Ti-Mo-Ni alloys in which the graph contained an actual data point corresponding to a Ti alloy containing 0.25% Mo and 0.75% Ni.).

One of skill would have known that the interconnect (for a solid polymer fuel cell) of Taruya could have been used for the interconnect (for a solid oxide fuel cell) of Simpkins. This

is evidenced by Woods which teaches a separator suitable for use in various known types of fuel cells, such as solid oxide fuel cells and polymer electrolyte fuel cells. The separator is generally a ferrous metal separator (column 1). Therefore, Woods teaches a ferrous metal separator for use in either a solid oxide fuel cell or a polymer electrolyte fuel cell.

Response to Arguments

Applicant's arguments filed 2/29/08 have been fully considered but they are not persuasive. Applicant states "it has been clarified with Examiner Dove that Taruya does not in fact teach the following element of claim 36: $0.5 \leq (\%Nb + \%Ti + 1/2(\%Ta)) \leq 1$ ". However, Examiner does believe Taruya teaches the "recited range" and was not present during the telephone interview on February 27, 2008. The abstract of Taruya recites "Ti not more than 0.2%...Nb not more than 0.3%", which clearly includes the values of 0.2% Ti and 0.3% Nb. Furthermore, [0047] clearly recites "Ti is 0.2% *or less*" and [0049] clearly recites "Nb 0.3%". Therefore, a total combined weight percentage of Ti, Nb and Ta of 0.5% is taught by Taruya.

Applicant asserts unexpected results for the "recited range", however, unexpected results must distinguish the claimed invention over the prior art of record. The table on page 21 of the specification does not have an alloy containing 0.3% of Nb and 0.2% of Ti, as disclosed by Taruya. Therefore, the evidence provided to show unexpected results is not persuasive. Examiner also points out that the table on page 21 is not commensurate in scope with the claimed invention. Taruya discloses an alloy in the "recited range".

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Dove whose telephone number is 571-272-1285. The examiner can normally be reached on Monday-Thursday (9:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Tracy Dove/
Primary Examiner, Art Unit 1795
June 3, 2008